

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SPECTRUM PHARMACEUTICALS, INC, et al,)
)
 Plaintiffs,)
)
 vs.)
)
 SANDOZ INC.,)
)
 Defendant.)

Case No. 2:12-cv-00111-GMN-NJK

ORDER GRANTING IN PART AND
 DENYING IN PART MOTION TO
 SEAL

(Docket No. 249)

Pending before the Court is Defendant's motion to seal. Docket No. 249. The motion seeks to file under seal portions of Defendant's opposition to Plaintiffs' Motion for Summary Judgment (sealed version: Docket No. 245; public version: Docket No. 244), and Exhibit 14 attached to the Declaration of John R. Lanham, filed in support of Defendant's opposition to Plaintiffs' Motion for Summary Judgment (sealed version: Docket No. 248; public version: Docket No. 247).

Defendant represents in its motion that its sole ground for filing the materials under seal is the designation of the materials by Plaintiff Spectrum as confidential pursuant to the parties' Protective Order. Docket No. 249, at 3. Therefore, on July 28, 2014, and in compliance with prior instructions from the Court, Plaintiffs filed the Declaration of Mark H. Izraelewicz in Support of Defendant's motion to seal. Docket No. 262.

I. STANDARD

The Ninth Circuit has held that there is a strong presumption of public access to judicial records. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to file documents under seal

bears the burden of overcoming that presumption. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*, 447 F.3d at 1178). Parties “who seek to maintain the secrecy of documents attached to dispositive motions must meet the high threshold of showing that ‘compelling reasons’ support secrecy.” *Kamakana*, 447 F.3d at 1180.¹ Those compelling reasons must outweigh the competing interests of the public in having access to the judicial records and understanding the judicial process. *Id.* at 1178-79; *see also Pintos*, 605 F.3d at 679 & n.6 (court must weigh “relevant factors,” including the public’s interest in understanding the judicial process). The Ninth Circuit has indicated that “‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to . . . release trade secrets.” *Kamakana*, 447 F.3d at 1179.

II. ANALYSIS

In his Declaration, Israelewicz represents that Spectrum withdraws its confidentiality designation with respect to the portions redacted in Defendant’s opposition to Plaintiffs’ Motion for Summary Judgment. Docket No. 262, at 3.

Additionally, in his Declaration, Izraelewicz represents that Exhibit 14 attached to the Declaration of John R. Lanham (“Exhibit 14”) is the rebuttal expert report of Spectrum’s validity expert, Dr. Richard G. Moran. Docket No. 262, at 2. Dr. Moran is Spectrum’s principal expert on the issue of the validity of Spectrum’s patent. *Id.* Izraelewicz further represents that, if this report were to be disclosed at this point, such disclosure could injure Plaintiffs’ competitive posture in a companion case (the “Ben Venue Labs Litigation,” 2:14-cv-980-GMN-PAL) that involves the same, or similar, invalidity arguments as this litigation. *Id.* Izraelewicz requests that the Court seal this expert report until such time as Plaintiffs have served expert reports in the Ben Venue Litigation. *Id.* Izraelewicz further notes that the Court previously sealed this report in the instant case, based on the same argument. *Id.*; *see also*

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Kamakana and *Foltz* involve non-parties’ attempts to obtain sealed court documents. The same analysis and standards apply to a party’s motion to seal. *See Pintos*, 605 F.3d at 679 n.5; *see also Kamakana*, 447 F.3d at 1182 n.9 (for the case before it, noting that “[t]he effective bottom line is that the district court was determining whether documents should be sealed”).

Docket No. 242, at 3. Additionally, Izraelewicz submits that Plaintiffs “will file Exhibit 14 in the public record one day after Plaintiffs serve Dr. Moran’s expert statement upon opposing counsel in the Ben Venue litigation.” Docket No. 262, at 2-3.

The Court has reviewed Exhibit 14 and concludes that it contains information that could injure Plaintiffs’ competitive posture in the Ben Venue Litigation, which warrants keeping it sealed at this time. Further, the Court finds that both good cause and compelling reasons exist to seal this information that overcome the presumption of public access, and that Exhibit 14 cannot be easily redacted while leaving meaningful information available to the public.²

III. CONCLUSION

IT IS ORDERED THAT for the reasons discussed more fully above and for good cause shown, the Court **GRANTS** in part and **DENIES** in part Defendant’s motion to seal. Docket No. 249.

IT IS FURTHER ORDERED THAT the motion to seal is **DENIED** in part, as to the portions redacted in Defendant’s opposition to Plaintiffs’ Motion for Summary Judgment. The Court hereby **ORDERS** that the opposition (Docket No. 245) shall be unsealed.

IT IS FURTHER ORDERED THAT the motion to seal is **GRANTED** in part, as to Exhibit 14 to the Declaration of John R. Lanham, filed in support of Defendant’s opposition to Plaintiffs’ Motion for Summary Judgment (Docket No. 247). Docket No. 248 shall therefore remain under seal at this time. The Court further **ORDERS** that, within one day of serving the opposing party in the Ben Venue Litigation with this report, Plaintiffs must file Exhibit 14 on the public docket in the instant case.

IT IS SO ORDERED.

DATED: August 18, 2014.


NANCY J. KOPPE
United States Magistrate Judge

Though Mr. Izraelewicz failed to represent to the Court in his Declaration whether Exhibit 14 could be easily redacted while leaving meaningful information available to the public, the Court has already engaged in this analysis, Docket No. 242, at 3, and the Court makes the same finding here.